104–117).[2] Judge Haney concurred in a separate opinion (R. 117–121), and Judge Wilbur dissented (R. 121–137). A decree of enforcement was entered on July 31, 1937 (R. 138–141).

ARGUMENT

The holding of the court below that the National Labor Relations Act may validly be applied to the kind of business in which the petitioner is engaged is in accordance with the principles approved by this Court at the last term. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58.

The test of jurisdiction laid down in the *Jones & Laughlin* case is whether "stoppage of * * * operations by industrial strife" would result in substantial interruption to the flow of interstate commerce. 301 U. S. at 41. Where such interruption would occur, the Court pointed out, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife," have a "close and intimate relation" to interstate commerce and are subject to federal regulation

[2] The order was modified to exclude application to the Seabright plant because the relation of that plant's operations to interstate commerce had not been established of record (R. 107, 116–117).

under this Act. 301 U. S. at 42, 43. In the *Fruehauf* and *Friedman-Harry Marks* decisions the Court, applying this principle, found the Act applicable not only to a vast, integrated enterprise such as the Jones & Laughlin Steel Corporation, but to smaller enterprises which were substantially dependent upon the movement of goods in the channels of interstate commerce. This rule has been uniformly followed, and the Act has been uniformly applied to such manufacturing enterprises by the various Circuit Courts of Appeals in proceedings to enforce or review orders of the Board. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, October Term 1937, No. 368; *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509 (C. C. A. 5th); *Renown Stove Co.* v. *National Labor Relations Board,* 90 F. (2d) 1017 (C. C. A. 6th).[3]

Petitioner is one of the four or five largest cannery concerns in the State of California (R. 60, 692, 694), the center of one of the most important industries in the western United States

[3] See also the following decisions in injunction suits: *Bowen et al.* v. *James Vernor Co.,* 89 F. (2d) 968 (C. C. A. 6th); *Pratt et al.* v. *Oberman & Co.,* 89 F. (2d) 786 (C. C. A. 8th); *Beman et al.* v. *Iowa Mfg. Co.,* 90 F. (2d) 249 (C. C. A. 8th); *Wilson & Co.* v. *Gates et al.,* 90 F. (2d) 247 (C. C. A. 8th); *General Motors Corp.* v. *Bajork et al.,* 90 F. (2d) 248 (C. C. A. 8th); *Lyons et al.* v. *Eagle-Picher Lead Co.,* 90 F. (2d) 321 (C. C. A. 10th).

(Bd. Exhs. 15, 24, 28, 34). It is located in the San Francisco Bay area, the greatest shipping center in the United States for canned fruit and vegetables (Bd. Exhs. 25, 35). Petitioner employs at times as many as 1200 to 1500 men (R. 656). In 1935 it packed a total of some 1,700,000 cases of canned goods (R. 60, 407), and shipped an average of 3,000 to 4,000 cases daily (R. 61, 219), a very substantial proportion of which were destined for points outside of the State and the continental United States (R. 60–61, 407–409, 658, 663–664, 687, 688; Bd. Exh. 16). It is apparent that petitioner is substantially dependent on the channels of interstate and foreign commerce for the economic success of its enterprise; that its business, and the industry of which it is a part, are of more than local concern; and that labor strife at petitioner's plant would directly and substantially burden and obstruct interstate and foreign commerce, as actual experience demonstrated (R. 75–76, 185–188, 194–196, 233, 419–424, 438, 443, 506). *Cf. Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 556.[4] The validity of the Act's application here is therefore clearly sustained by the principles laid down in the *Jones & Laughlin* case and other cases decided under this Act at the last term.

---

[4] In this connection the particular terms of petitioner's sales contracts, and the point at which title passes, is immaterial. *Cf. National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. at 72; *Pennsylvania R. R.* v. *Clark Brothers Coal Co.*, 238 U. S. 456, 468.

Respondent seeks to distinguish these precedents on the grounds (1) that the fruit and vegetables which petitioner packs and thereafter causes to be shipped in the channels of interstate commerce are grown in the State of California; and (2) that the quantity of petitioner's pack so shipped, while substantial, is less than 50 per cent of the total. Neither distinction is tenable.

(1)

The validity of the Act's application is unaffected by the fact that "the bulk"[5] of the fruits and vegetables canned and shipped by petitioner are grown in the State of California, where petitioner's plant is located. In the *Jones & Laughlin* case the Court expressly stated that its decision did not turn on the conception that the manufacturing process was carried on in a "stream" or "flow", of commerce, wherein the raw materials arriving from without the State came to rest temporarily at the plant and later went forward again in interstate commerce. 301 U. S. at 36. The Court gave "full weight" to the argument that the "stream of commerce" was broken by the steel company's manufacturing operations at Aliquippa. 301 U. S. at 41. The Court expressly stated that congressional power is not limited to transactions which can be deemed to be an essential part of such

[5] The hominy packed by petitioner is received from without the State (R. 689–690).

a "flow," that "burdens and obstructions may be due to injurious action springing from other sources," and that the commerce power "was plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' " 301 U. S. at 36, 37.

Certainly the danger to interstate commerce from labor disputes in a cannery shipping its products in interstate commerce is not diminished by the fact that the cannery is located in the State in which the products are grown. The underlying basis of the statute is as applicable and the danger it is designed to meet is as compelling here as in the case of the Friedman-Harry Marks Clothing Company, the Fruehauf Trailer Company, or other businesses of that general character.

The decision in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, was deemed "not controlling" in the *Jones & Laughlin* case, not because the bituminous coal there involved originated in the state of "production," but because "the provisions of the statute relating to production were invalid upon several grounds,—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process." 301 U. S. at 41; see also at 39–40. The distinction was not founded on

the type of business subject to regulation. *Cf. Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. at 557.

To accept petitioner's view in such cases would be to deny Congressional authority on the basis of a rule of thumb having no relation to the essential purposes of the commerce clause as here applied. The result would be that virtually all enterprises engaged in the recovery of the nation's basic natural resources, such as lumber, petroleum, metals and coal, as well as the produce canning and packing industry here involved, would be excluded from the operation of the Act. In all of these industries, labor disputes would substantially and directly impede interstate commerce and be of national concern. To adopt petitioner's argument would be, as this Court said in the *Jones & Laughlin* case, "to shut our eyes to the plainest facts of our national life." 301 U. S. at 41.

(2)

Petitioner's second argument—that the Act may not be applied because the portion of petitioner's product shipped in interstate and foreign commerce is less than 50 per cent of the whole—is likewise without merit. Of a total 1935 pack of approximately 1,700,000 cases, about 627,000 cases of petitioner's product were shipped to other states

and foreign countries, in the regular course of business.[6] Petitioner's interstate and foreign commerce is very substantial intrinsically, and is also a very substantial proportion of the total. If petitioner's employees packed only the 627,000 cases shipped in interstate commerce or foreign commerce, there could be no question that "a stoppage of operations by industrial strife" at petitioner's plant would substantially interrupt the flow of interstate commerce. The fact that the same employees also pack cases destined for intrastate consumption does not make the effect of a stoppage upon interstate shipments any the less substantial or direct. It is obvious that no regulation can be imposed protecting the interstate shipments which will not apply to the employees engaged in packing all the products of the plant.

Under such circumstances, where the Federal power can not be exercised to protect interstate commerce without at the same time covering intrastate transactions inseparable from the interstate, it may be applied to the whole. *Shreveport Case,* 234 U. S. 342; *Minnesota Rate Cases,* 230 U. S. 352,

---

[6] This comprised 37 per cent of the total pack and about 42 per cent of the amount actually sold and shipped in 1935. (*Supra*, p. 4.) About 79 per cent of the 1935 pack was actually billed to customers having their principal offices outside the State of California (R. 407–409). The discrepancy arises because from 40 to 50 per cent of petitioner's product is sold to Stokely Brothers, an Indiana corporation, of which all but five or ten per cent is shipped locally at the Stokely Corporation's direction (R. 655, 658).

399; *Southern Railway Co.* v. *United States*, 222 U. S. 20. This necessarily follows from the constitutional mandate that "this Constitution and the laws of the United States * * * made in pursuance thereof * * * shall be the supreme law of the land." Petitioner's contention, and the argument of Judge Wilbur, dissenting in the Circuit Court of Appeals (R. 132), would result in the disappearance of Federal power and the supremacy of state power over transactions directly and substantially affecting interstate commerce whenever they were inseparably intermingled with a slightly larger quantity of intrastate transactions. Such a doctrine is inconsistent both with the express language of the Constitution and with principles repeatedly recognized by this Court.

Apart from the authorities, petitioner's argument would give rise to such problems of administration as to call for its rejection on that ground alone. As the court below said (R. 115):

> The suggestion that we should make an academically arbitrary 50% as the boundary line between the two jurisdictions ignores the practical necessities of industry. Shall it be 50% in volume or price? What happens when for the first 6 months of the year 60% is exported and 40% is domestic, and for the rest of the year the percentages are reversed? Does the Federal control end on June 30th? On which is the burden of proof, the state interest or the Federal? How unfair may be the competition between the in-

> dustry producing the 60% for export under Federal regulation and its competitor with 40% under state regulation or no regulation at all!
>
> Industry and business cannot thrive, in some cases it could not exist, in the uncertainty of such an abstract mathematical solution of the problem.

Other problems may be suggested by the fact that 85 per cent or more of the substantial quantities of peaches, pears, apricots and spinach packed by petitioner are shipped to customers outside the State (R. 687–688), whereas items such as tomatoes and pork and beans are sold locally in large part.

Questions of this character concerning the application of the Act are necessarily questions of degree, to be determined on the facts of individual cases as they arise. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. at 32, 37. A doctrine of *de minimis* may well be applicable in this field of law as in others. *Industrial Association* v. *United States*, 268 U. S. 64, 84. But inasmuch as petitioner is engaged in interstate commerce on a large scale, that problem is not presented here. It is sufficient for the case at hand that this petitioner's business is well within the ambit of the Federal commerce power.

CONCLUSION

The judgment below is correct and in accord with the precedents. There is no conflict among the Circuits.[7] The petition should be denied.

Respectfully submitted.

STANLEY REED,
Solicitor General.

ROBERT L. STERN,
Special Assistant to the Attorney General,

HENRY M. HART, JR.,
Attorney.

CHARLES FAHY,
General Counsel.

PHILIP LEVY,
Attorney,
National Labor Relations Board.

NOVEMBER 1937.

---

[7] The decisions of other Circuit Courts of Appeals are in accord with the decision below. *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th); *Lyons et al.* v. *Eagle-Picher Lead Mining Co.*, 90 F. (2d) 321 (C. C. A. 10th).

U. S. GOVERNMENT PRINTING OFFICE: 1937